

1 JOHN C. ULIN (State Bar No. 165524)
2 John.Ulin@apks.com
3 ERIC D. MASON (State Bar No. 259233)
4 Eric.Mason@apks.com
5 ARNOLD & PORTER KAYE SCHOLER LLP
6 777 South Figueroa Street, 44th Floor
7 Los Angeles, California 90017-5844
8 Tel.: (213) 243-4000; Fax: (213) 243-4199

7 LOUIS S. EDERER (*Pro Hac Vice*)
8 Louis.Ederer@apks.com
9 MATTHEW T. SALZMANN (*Pro Hac Vice*)
10 Matthew.Salzmann@apks.com
11 ARNOLD & PORTER KAYE SCHOLER LLP
12 250 West 55th Street
13 New York, New York 10019
14 Tel.: (212) 836-8000; Fax: (212) 836-8689

13 *Attorneys For Plaintiff*
14 *Sweet People Apparel, Inc. d/b/a/ Miss Me and*
15 *RCRV, Inc. d/b/a Rock Revival*

16 **UNITED STATES DISTRICT COURT**
17 **CENTRAL DISTRICT OF CALIFORNIA**
18 **WESTERN DIVISION**

19 SWEET PEOPLE APPAREL, INC.
20 d/b/a/ MISS ME, et al.,

21 Plaintiffs,

22 v.

23 PHOENIX FIBERS, INC., et al.,

24 Defendants.
25
26
27
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Case No.: 2:16-cv-00940-TJH-JC

Hon. Terry J. Hatter Jr.

**NOTICE OF MOTION AND
MOTION TO STRIKE
DEFENDANT COMAK
TRADING INC.'S ANSWER
AND TO ENTER DEFAULT**

Date: March 27, 2017

Time: UNDER SUBMISSION

Courtroom: 9B

Case Filed: February 10, 2016

1 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE that on March 27, 2017, or as soon thereafter as the
3 matter may be taken under submission by the Honorable Terry J. Hatter Jr., located at
4 350 W. 1st Street, Courtroom #9B, 9th Floor, Los Angeles, California 90012,
5 Plaintiffs Sweet People Apparel, Inc. d/b/a/ Miss Me and RCRV, Inc. d/b/a Rock
6 Revival ("Sweet People") will and hereby do move the Court, pursuant to Central
7 District Local Rules 83-2.2.2, 83-2.2.4, and Federal Rule of Civil Procedure 55(a), to
8 strike Defendant Comak Trading Inc.'s ("Comak") Answer (Dkt. No. 27) and to enter
9 Comak's default.

10 On December 5, 2016, this Court granted the withdrawal motion of Comak's
11 prior counsel. Dkt. No. 74. To this day, Comak has failed to obtain substitute
12 counsel. Therefore, good cause exists to strike Comak's Answer (Dkt. No. 27), and
13 to enter Comak's default pursuant to Federal Rule of Civil Procedure 55(a).

14 Because Comak, a corporation, cannot appear in this matter *pro se* (see L.R.
15 83-2.2.2), and because Comak is not represented by counsel, this motion is made
16 without a prior L.R. 7-3 conference of counsel.

17 This motion is supported by the attached memorandum of points and
18 authorities, the declaration of Eric D. Mason, all other files and records in this action,
19 and upon such further showing as may be made at any hearing that the Court shall
20 convene thereon.

21 Dated: February 21, 2017

ARNOLD & PORTER KAYE SCHOLER LLP

22 By: /s/ Eric D. Mason

23 JOHN C. ULIN

24 ERIC D. MASON

LOUIS S. EDERER

25 MATTHEW T. SALZMANN

26 *Attorneys for Plaintiffs*

27 *Sweet People Apparel, Inc. d/b/a/ Miss Me*
28 *and RCRV, Inc. d/b/a Rock Revival*

MEMORANDUM OF POINTS AND AUTHORITIES

Plaintiffs Sweet People Apparel, Inc. d/b/a Miss Me and RCRV, Inc. d/b/a Rock Revival (collectively “Plaintiffs”) respectfully request that the Court strike Defendant Comak Trading, Inc.’s (“Comak”) Answer (Dkt. No. 27) and enter Comak’s default. Comak has filed an answer, but is presently not represented by counsel and thus cannot appear in this case. Comak’s former counsel, Sagi Schwartzberg and Michael J. Luther, were granted permission to withdraw without substitution in December 2016, and to date, Comak has not informed Plaintiffs or the Court that it has obtained substitute counsel. Comak’s failure to timely retain new counsel warrants the striking of its Answer so that default can be entered against it, in which event this case will resolve by default judgment.

I. STATEMENT OF FACTS

Plaintiffs initiated this action on February 10, 2016, upon filing of the Complaint. Dkt. No. 1. Comak filed its Answer and Crossclaim on May 15, 2016. Dkt. No. 27. Plaintiffs filed their First Amended Complaint shortly thereafter on May 18, 2016. Dkt. No. 32. Comak has not filed an Answer to Plaintiffs’ First Amended Complaint.

On September 12, 2016, Comak’s then-counsel of record, Mr. Schwartzberg and Mr. Luther, filed a motion to withdraw as counsel for Comak, indicating that Comak’s President, Lydia Evilsa Terrezas Cho, sought to represent herself *pro se*. Dkt. No. 62. The Court denied that motion, citing the Local Rules. *See* Dkt. No. 68. Mr. Schwartzberg and Mr. Luther filed a second motion to withdraw on September 29, 2016 (Dkt. 69). Plaintiffs’ non-opposition to that motion expressly requested that if the motion were granted, but Comak did not timely obtain replacement counsel within thirty (30) days, Comak’s Answer be stricken and default be entered against it. Dkt. No. 71. On December 5, 2016, the Court granted the motion to withdraw. Dkt. No. 74.

1 Comak has been without counsel for far more than thirty (30) days. There is
 2 no indication that Comak intends to participate in this litigation. To date, Plaintiffs
 3 have not been contacted by replacement counsel for Comak, and no notice of
 4 appearance has been filed in this action by replacement counsel for Comak. Mason
 5 Decl. ¶ 3. As such, Comak is currently barred from appearing in this action, pursuant
 6 to Local Rule 83-2.2.2.

7 **II. ARGUMENT**

8 “A corporation may appear in federal court only through licensed counsel.”
 9 *United States v. High Country Broad. Co.*, 3 F.3d 1244, 1245 (9th Cir. 1993); *see*
 10 *also D-Beam Ltd. P’ship v. Roller Derby Skates, Inc.*, 366 F.3d 972, 973-74 (9th Cir.
 11 2004) (“It is a longstanding rule that [c]orporations and other unincorporated
 12 associations must appear in court through an attorney.”) (internal quotation omitted).
 13 Similarly, Central District Local Rule 83-2.2.2 states: “[n]o organization or entity of
 14 any other kind . . . including corporations . . . may appear in any action or proceeding
 15 unless represented by an attorney permitted to practice before this Court under
 16 L.R. 83-2.1.” L.R. 83-2.2.2.

17 The Court may strike Comak’s Answer and enter default against it for Comak’s
 18 failure to timely find replacement counsel. *See Thompson v. Hous. Auth. of City of*
 19 *L.A.*, 782 F.2d 829, 831 (9th Cir. 1986) (“District courts have inherent power to
 20 control their dockets. In the exercise of that power they may impose sanctions
 21 including, where appropriate, default or dismissal.”); *see also* Fed. R. Civ. P. 55(a)
 22 (providing that when a defendant “has failed to plead or otherwise defend” an action,
 23 “the clerk must enter the party’s default”). Courts routinely strike the answers of, and
 24 enter default against, defendants who refuse to defend themselves, including by
 25 refusing to retain counsel. *See, e.g., Fuzzy Logic Prods., Inc. v. Trapflix, LLC*, CV
 26 15-6203 PA (SSX), 2016 WL 3693738, at *2 (C.D. Cal. July 11, 2016) (noting that,
 27 after failure to substitute withdrawn counsel, corporate defendant’s answer was
 28 stricken and default entered); *HeadBlade, Inc. v. Prods. Unlimited, LLC*,

CV1502611SJOVBKX, 2016 WL 6237902, at *2 (C.D. Cal. May 23, 2016) (same); *Gen. Elec. Capital Corp. v. Ten Forward Dining, Inc.*, CIV. S-09-3296 FCD, 2011 WL 2671542, at *1 (E.D. Cal. July 6, 2011) (“[A] court may sanction corporate defendants by striking their answer when they fail to retain counsel to defend themselves.”); *Galtieri-Carlson v. Victoria M. Morton Enters., Inc.*, 2:08-CV-01777, 2010 WL 3386473, at *3 (E.D. Cal. Aug. 26, 2010) (striking answer and acknowledging court’s authority to enter default judgment where defendants “have made no ascertainable effort to retain counsel or defend themselves”); *Rojas v. Hawgs Seafood Bar, Inc.*, No. C08-03819 JF (PVT), 2009 WL 1255538, at *1 (N.D. Cal. May 5, 2009) (“When a corporation fails to retain counsel to represent it in an action, its answer may be stricken and a default judgment entered against it.”) (citing *Emp. Painters’ Tr. v. Ethan Enters., Inc.*, 480 F.3d 993 (9th Cir. 2007) (finding corporation’s violation of local rules and failure to retain counsel as justification for entry of default judgment)).

Here, Comak failed to timely retain replacement counsel after Mr. Schwartzberg and Mr. Luther withdrew from representation. The consequences of this failure — the striking of Comak’s Answer and entry of default — were made clear in Plaintiffs’ non-opposition and were cited to in this Court’s denial of counsel’s first motion to withdraw. *See* Dkt. Nos. 68, 71. Yet, Comak has shown no interest in participating in this litigation and continues to violate the Local Rules. Mr. Schwartzberg and Mr. Luther first moved to withdraw as Comak’s counsel of record on September 12, 2016, more than five months ago. Dkt. No. 62. Comak has had more than enough time to search for and find replacement counsel, and has failed to do so. Therefore, good cause exists for the Court to strike Comak’s Answer and to enter its default. Comak’s refusal to litigate should not prevent Plaintiffs and this Court from resolving this case by way of default judgment, once Comak’s Answer is stricken and its default entered.

1 **III. CONCLUSION**

2 For all the foregoing reasons, Plaintiffs respectfully request that the Court enter
3 an order striking Comak's Answer and directing the clerk to enter Comak's default.

4 Dated: February 21, 2017

ARNOLD & PORTER KAYE SCHOLER LLP

5 By: /s/ Eric D. Mason

6 JOHN C. ULIN

7 ERIC D. MASON

8 LOUIS S. EDERER

9 MATTHEW T. SALZMANN

10 *Attorneys for Plaintiff*

11 *Sweet People Apparel, Inc. d/b/a/ Miss Me*
12 *and RCRV, Inc. d/b/a Rock Revival*

CERTIFICATE OF SERVICE

I am over eighteen years of age and not a party to this action. I am employed in the County of Los Angeles, State of California. My Business Address is 777 S. Figueroa St., Floor 44, Los Angeles, California 90017-5844.

On February 21, 2017, I served the following document described as **NOTICE OF MOTION AND MOTION TO STRIKE DEFENDANT COMAK TRADING INC.'S ANSWER AND TO ENTER DEFAULT** on the following individuals:

Mark D. Erickson
Kenneth G. Parker
Martin M. Ellison
Christopher B. Maciel
Haynes and Boone, LLP
600 Anton Boulevard, Suite 700
Costa Mesa, California 92626

William C. O'Neill
Ross Wersching & Wolcott LLP
3151 Airway Avenue, Building S-1
Costa Mesa, California 92626

[Attorneys for Phoenix Fibers, Inc.]
Served Electronically

[Attorneys for Phoenix Fibers, Inc.]
[Served Electronically]

J T Fox
Law Offices of JT Fox and Associates
556 South Fair Oaks Avenue Suite 444
Pasadena, CA 91105

Eugene S Alkana
Eugene S Alkana Law Office
131 North El Molino Avenue Suite 310
Pasadena, CA 91101

[Attorneys for Tiffany Alana Wolff]
[Served Electronically]

[Attorneys for U.S. General Export]
[Served Electronically]

Lydia Evilsa Terrazas Cho
702 N Crescent Drive
Beverly Hills, CA 90210
Pro Se

Comak Trading
2550 S Soto St.
Vernon, CA 90058

[Served via U.S. Mail]

[Served via U.S. Mail]

I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Dated: 2/21/2017

/s/ Stacie James
Stacie James